

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5579 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESHBHAI THAKORBHAI

Versus

STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioner

Mr A.G. Uraizee for M/S PURNANAND & CO for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 03/04/96

ORAL JUDGEMENT

The petitioner has, firstly, challenged the order passed by the Mamlatdar and Agricultural Lands Tribunal, Amod in an inquiry under section 20 and 21 of the Gujarat Agricultural Lands Ceiling Act, 1960 in respect of the holdings of the agricultural land by the petitioner in village Buva and Itola of Tal. Amod, Dist: Bharuch.

2. By virtue of the impugned order of the Mamlatdar in the inquiry in ceiling case No.10/85 passed on 16.10.85, the petitioner is held to be holding 1 hectre 16 Are 35 sq. mtrs. of land as surplus land. The Mamlatdar declared survey No.1130 of Buva village as surplus and ordered that the same to vest in the Government. The petitioner being aggrieved and dissatisfied by the order of the Mamlatdar had filed appeal before the Deputy Collector, Bharuch. The Deputy Collector in Ceiling Appeal No.6/86 confirmed the order of the Mamlatdar while dismissing the appeal on 18.2.86. The petitioner carried the matter before the Gujarat Revenue Tribunal by filing revision application No.433/86. The Tribunal allowed the revision application and remanded the matter to the Mamlatdar for deciding the same in the light of the directions given in the order dated 3.2.89. After the remand, the Mamlatdar again held that the petitioner is holding surplus land and declared block No.1130 admeasuring 1 hectre 16 Are 35 sq. mtrs. of land as surplus land and decided that the same would vest in the Government. The order of the Mamlatdar in Ceiling Case No.4/89 was passed on 31.3.89.

3. Being aggrieved by the said order of the Tribunal, the petitioner had preferred appeal before the Deputy Collector, Bharuch by filing an appeal No.1/89 which came to be dismissed on 11.7.89. The matter was further carried in revision by the petitioner by filing revision application No.768/89. The revision also came to be dismissed on 26.2.93. Hence this petition under Article 227 of the Constitution of India.

4. The only contention raised before this Court by the learned counsel appearing for the petitioner is that the authorities below have committed serious error in appreciation and examination of facts and the provisions of section 2(15) of the Act. Section 2(15) of the Act reads as under :

"2.(15) "to hold land" with its grammatical variations and cognate expressions means to be lawfully in actual possession of land as owner or tenant as the case may be:

Provided that in the case of land mortgaged with possession --

- (a) if it is not in the actual possession of the tenant, the mortgager shall be deemed to hold it as owner, and

(b) if it is in the actual possession of a person
as a tenant there of, such person shall be deemed
to hold it as a tenant."

On appreciation of the facts and circumstances, it cannot be said that the impugned orders are in any way illegal, unjust or perverse. On 1.4.76, the petitioner was in possession of Itola land as owner and he was personally cultivating the same. He has also shown this land in form No.2. Accordingly, it was never disputed by the petitioner that he was not the owner of Itola land. It is found on facts that on 1.4.76, the petitioner was in possession of the disputed land and was the owner of the same. Therefore, the contention that the land of Itola should not have been considered in the holdings of the petitioner is factually not found acceptable. The findings of facts recorded by the Mamlatdar and confirmed by the two authorities in appeal and revision cannot be said to be perverse, unjust or illegal requiring interference of this Court in a petition under Article 227 of the Constitution where the jurisdictional sweep is very much circumscribed. This Court is not sitting in appeal over the decision of the authorities below. In fact, the jurisdiction of this Court under Article 227 of the Constitution is supervisory.

5. In the circumstances, this petition is liable to be rejected. Accordingly, it is rejected. Rule discharged. Interim relief, obviously, stands vacated.

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